

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Dahmen *et al.*

Appl. No.: 10/565,883

§ 371(c) Date: May 24, 2006

For: **Fungicide Ternary Active
Ingredient Combinations**

Confirmation No.: 8057

Art Unit: 1612

Examiner: HOLLOMAN, NANNETTE

Atty. Docket: 2400.0180000/RWE/PDL

Fifth Supplemental Information Disclosure Statement

Mail Stop Amendment

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Listed on accompanying IDS Forms are documents that may be considered material to the patentability of this application as defined in 37 C.F.R. §1.56, and in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.97 and 1.98. The numbering on this Fifth Supplemental Information Disclosure Statement is a continuation of the numbering in Applicants' Fourth Supplemental Information Disclosure Statement filed on October 12, 2010, in connection with the above-captioned application.

Where the publication date of a listed document does not provide a month of publication, the year of publication of the listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Applicants have listed publication dates on the attached IDS Forms based on information presently available to the undersigned. However, the listed publication dates should not be construed as an admission that the information was actually published on the date indicated.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist. The Examiner is specifically requested not to rely solely on the material submitted herewith.

Applicants have checked the appropriate boxes below.

- ☐ 1. Statement under 37 C.F.R. 1.704(d). Each item of information contained in this Information Disclosure Statement was first cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in 37 C.F.R. § 1.56(c) more than thirty days prior to the filing of this information disclosure statement.
- ☒ 2. Filing under 37 C.F.R. § 1.97(b). This Information Disclosure Statement is being filed within three months of the date of filing of a national application other than a continued prosecution application (CPA), OR within three months of the date of entry of the national stage as set forth in 37 C.F.R. § 1.491 in an international application, OR before the mailing date of a first Office Action on the merits OR before the mailing of a first Office Action after the filing of a request for continued examination under 37 C.F.R. § 1.114. No statement or fee is required.

☐ 3. Filing under 37 C.F.R. § 1.97(c). This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection, or Notice of Allowance, or an action that otherwise closes prosecution in the application.

☐ a. Statement under 37 C.F.R. § 1.97(e)(1). I hereby state that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1).

☐ b. Statement under 37 C.F.R. § 1.97(e)(2). I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application and, to my knowledge after making reasonable inquiry, was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).

☐ c. The required fee is provided through online credit card payment authorization in the amount of \$180.00 in payment of the fee under 37 C.F.R. § 1.17(p).

☐ 4. Filing under 37 C.F.R. § 1.97(d) This Information Disclosure Statement is being filed more than three months after the U.S. filing date and after the mailing date of a Final Rejection or Notice of Allowance, but on or before payment of the Issue Fee. The required fee is provided through online credit card payment authorization in the amount of \$180.00 in payment of the fee under 37 C.F.R. § 1.17(p); in addition:

☐ a. Statement under 37 C.F.R. § 1.97(e)(1). I hereby state that each item of information contained in this Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(1).

☐ b. Statement under 37 C.F.R. § 1.97(e)(2). I hereby state that no item of information in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application and, to my knowledge after making reasonable inquiry, was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this Information Disclosure Statement. 37 C.F.R. § 1.97(e)(2).

☐ 5. The document(s) was/were cited in a search report by a foreign patent office in a counterpart foreign application. Submission of an English language version of the search report that indicates the degree of relevance found by the foreign office

is provided in satisfaction of the requirement for a concise explanation of relevance. 1138 OG 37, 38 and MPEP 609.04(a)(III).

- ☒ 6. A concise explanation of the relevance of the non-English language document(s) appears below in accordance with 37 C.F.R. § 1.98(a)(3).

Document **NPL50**, Prosecution History of European Patent Appl. No. 03735610.2 (European Counterpart of U.S. Appl. No. 10/518,742, cited as US 2006/0004070 A1 in the First Supplemental Information Disclosure Statement as document US14), July 13, 2006 - September 25, 2009, is in the German language. It is believed that document **NPL51** is a partial English language translation of document NPL50.

Document **NPL52**, Opposition Proceeding in European Patent No. EP-B-1482798, March 5, 2007 - November 9, 2009, is in the German language. It is believed that document **NPL53** is a partial English language translation of document NPL52. EP-B-1482798 corresponds to US 2005/0101639 A1, cited in the First Supplemental Information Disclosure Statement as document US13.

- ☒ 7. Copies of documents **NPL49-NPL57** are submitted. Further, in accordance with 37 C.F.R. § 1.98(a)(2), no copies of U.S. patents and patent application publications cited as documents **US35-US39** on the attached IDS Forms are submitted.

- ☐ 8. Copies of the documents were cited by or submitted to the Office in an IDS that complies with 37 C.F.R. § 1.98(a)-(c) in Application No. _____, filed

_____, which is relied upon for an earlier filing date under 35 U.S.C.

§ 120. Thus, copies of these documents are not attached. 37 C.F.R. § 1.98(d).

- ☐ 9. It is expected that the examiner will review the prosecution and cited art in the parent Application No. _____, in accordance with MPEP 2001.06(b), and indicate in the next communication from the office that the art cited in the earlier prosecution history has been reviewed in connection with the present application.
- ☒ 10. In accordance with the Federal Circuit decision in *Dayco Prods., Inc. v. Total Containment, Inc.* 329 F.3d 1358 (Fed. Cir. 2003), Applicants submit herewith the Office Action mailed on November 23, 2010, from co-pending U.S. Patent Application No. 09/843,396, filed April 26, 2001, as document **NPL49**.

The identification of these Office Actions is not to be construed as a waiver of secrecy as to those applications now or upon issuance of the present application as a patent. The Examiner is respectfully requested to consider the cited applications and the art cited therein during examination.

The Examiner's attention is also directed to the following U.S. Patents:

U.S. Patent Nos. 5,789,430, 5,859,039, 6,355,634 B1 and 6,407,100 B1, indicated on their faces as assigned to Bayer Aktiengesellschaft, are now owned by Bayer CropScience AG, the same assignee of the present application.

It is respectfully requested that the Examiner initial and return a copy of the enclosed IDS Forms, and indicate in the official file wrapper of this patent application that the documents have been considered.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Robert W. Esmond
Attorney for Applicants
Registration No. 32,893

Date: Dec. 22, 2010

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

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